IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

Civil Revision No.875 of 2007
Date of decision: February 19,2007

Saubhag V. Smt. Santosh Kumari and another

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Ramesh Kumar,Advocate, for the petitioner.

Viney Mittal,J.

Saubhag, legal representative of the Plaintiff, Shanti Devi, is the petitioner before this court. He has challenged the order dated December 22,2006 passed by the learned District Judge, Karnal whereby on an appeal filed by defendant-respondent,Santosh Kumari, order dated August 2,2005 passed by the learned trial Court has been set aside and as a result thereof, the exparte judgment and decree dated April 7,1993 passed against Smt. Santosh Kumari have been set aside.

It emerges from the record that Shanti Devi, plaintiff, filed a suit for possession by way of pre-emption. In the aforesaid suit, Smt.Santosh Kumari was impleaded as defendant No.1 and the vendor was impleaded as defendant No.2. Defendant No.2 was given up as unnecessary but the proceedings continued against defendant No.1. Originally,defendant No.1, Santosh Kumari could not be served for October 29,1991 and fresh summons were ordered to be issued to her for December 4,1991.On December 4,1991, a lawyer put in appearance on her behalf and filed a memo of appearance and the case was adjourned to January 3,1992 for filing power of attorney and written statement. Thereafter several opportunities were given but neither power of attorney was filed by

the Advocate who had put in appearance nor any written statement was filed on behalf of defendant No.1. Consequently, on August 19,1992, Santosh Kumari was ordered to be proceeded exparte. Thereafter on the basis of the exparte evidence led by the plaintiff, the suit in question was decreed on April 7,1993.

Santosh Kumari filed an application on July 16,2001 for setting aside the exparte order and judgment and decree. It was pleaded by her that she had never received any summons in the said suit nor had engaged any counsel to appear on her behalf. She specifically pleaded that she had never signed any power of attorney in favour of any lawyer.

The application filed by Santosh Kumari was contested by the plaintiff, decree-holder.

The trial court dismissed the aforesaid application.

The matter was taken up in appeal by Santosh Kumari. The first appellate Court examined the entire evidence on record and came to the conclusion that at no point of time Santosh Kumari had ever been served in the said proceedings.

It was also noticed that the lawyer who had put in appearance on behalf of Santosh Kumari was not shown to have been authorised by her to appear for her. It was also noticed that Santosh Kumari was in fact a resident of Delhi, whereas the summons in the suit had been sent to her to House No.150, Sector-14, Karnal at which address she was not residing. On that basis, the appellate court came to the conclusion that since no service had ever been effected on Santosh Kumari, therefore, order dated August 19,1992 and the exparte judgment and decree dated April 7,1993 were liable to be set aside. Consequently the appeal filed by Santosh Kumari was allowed and the aforesaid order dated August

19,1992 and the exparte judgment and decree dated April 7,1993 were set aside.

The matter was remanded back to the trial Court to give an opportunity to Santosh Kumari to file written statement and thereafter the suit be decided in accordance with law.

The aforesaid order passed by the learned District Judge has been challenged by the plaintiff-decree holder before this court.

I have heard at some length Shri Ramesh Kumar,learned counsel appearing for the petitioner and have also gone through the various documents available on the record.

It has been very vehemently argued by the learned counsel appearing for the petitioner that since,defendant Santosh Kumari was duly represented by a counsel and in spite of number of opportunities granted to her no written statement had been filed, and since thereafter no one had chosen to appear on behalf of her in the proceedings in the said suit, therefore, the trial court was justified in proceeding against her exparte and ultimately passing exparte decree. Learned counsel has also argued that the application filed by the defendant was barred by limitation.

I have duly considered the aforesaid arguments of the learned counsel but find myself unable to agree with the same.

The appellate court has discussed the entire evidence on record and has come to a positive finding of fact that defendant, Santosh Kumari had, at no point of time, been served in the proceedings in the suit. The appellate Court has further chosen to notice that Santosh Kumari was a resident of Delhi an as such the summons sent to her at Karnal address could not be taken to have been duly served upon her. The appellate court also examined the

statement of the Advocate who had put in appearance on behalf of Santosh Kumari and has come to the conclusion that Santosh Kumari was not shown to have ever engaged/authorised, Advocate to appear on her behalf.

I am convinced that the various observations made by the appellate court are not erroneous or contrary to the evidence on record. No case for interference in the revisional jurisdiction of this court is made out.

Dismissed.

February 19,2007 (Viney Mittal)
sks Judge